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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 PAUL FERRANDO, *et al.*,

11 Plaintiffs,

12 v.

13 KRAUSE, INC., *et al.*,

14 Defendants.  
15

Case No. 2:02-cv-00241-LDG (LRL)

**ORDER**

16 The plaintiffs, Paul and Jackie Ferrando, move *in limine* (#92) to preclude the  
17 defendants from offering into evidence, soliciting testimony about, or referring to in any  
18 manner the surveillance videotape. The defendants, Krause, Inc. and Home Depot (USA),  
19 Inc. oppose the motion (#107).

20 In their motion, the plaintiffs assert that the defendants' purpose in offering the  
21 videotape is to show Ferrando inappropriately using a ladder, thereby establishing that he  
22 has also misused the ladder on the date of the accident. Such character evidence is  
23 inadmissible pursuant to Federal Rule of Evidence 404(a).


24 The defendants respond that the tape shows Ferrando engaged in activities other  
25 than improperly using a ladder, which other activities tend to negate Ferrando's claims as  
26 to the extent of his disabilities resulting from the ladder accident. In addition, they suggest

1 that the scenes of Ferrando improperly using a ladder are admissible to impeach Ferrando  
2 because "he *essentially* testified that he *always* followed the instructions with regard to use  
3 of the Krause ladder because ladder usage carries with it a certain amount of risk."  
4 (Emphasis added.) The court disagrees with the defendants' assesment that Ferrando  
5 "essentially testified" that he always followed instructions in using the Krause ladder.  
6 Rather, the testimony to which the defendants direct the court's attention concerns  
7 Ferrando's use of the Krause ladder on the date of the accident. Thus, the testimony that  
8 defendants seek to impeach is Ferrando's testimony that he used the ladder correctly on  
9 the date of the accident. Such evidence would impeach Ferrando only if the jury first  
10 concludes that, on the date of the accident, Ferrando acted in conformity with his use of  
11 the ladder as seen in the surveillance videotape. Rule 404(a) precludes the admission of  
12 evidence for this purpose.

13 Accordingly,

14 THE COURT **ORDERS** that Plaintiffs' Motion in Limine to Preclude Defendants from  
15 Offering into Evidence, Soliciting Testimony About, or Referring to in Any Manner the  
16 Surveillance Tape (#92) is GRANTED in part and DENIED in part as follows: Defendants  
17 are precluded from offering into evidence, soliciting testimony about, or referring in any  
18 manner to those portions of the videotape in which Paul Ferrando is using a ladder.  
19 Defendants may offer into evidence, solicit testimony about, and refer to the remainder of  
20 the surveillance videotape.

21  
22 DATED this 23 day of August, 2006.

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25 Lloyd D. George  
26 United States District Judge